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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARRY G. PHILPOT,

Index No.: 16-cv-1851

Plaintiff,

**COMPLAINT AND JURY DEMAND
FOR DAMAGES FOR COPYRIGHT
INFRINGEMENT**

v.

VOICE MEDIA GROUP, INC.,

Defendant.

Plaintiff LARRY G. PHILPOT, by and through his attorneys at GARBARINI FITZGERALD P.C., brings this Complaint and Jury Demand against Defendant VOICE MEDIA GROUP, INC. (“VMG”) based on copyright infringement pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101 *et seq.* (the “Copyright Act” or “Act”).

NATURE OF THE ACTION

1. Defendant VMG operates various media properties including their related websites. Those properties, and associated websites, include, *inter alia*, Broward Miami New Times, Dallas Observer, and Detroit Metro Times.
2. Defendant, without license or permission of any kind, impermissibly copied Plaintiff’s copyrighted photographs of Willie Nelson and Kid Rock (collectively the

“Copyrighted Photographs”) and displayed, broadcast, or otherwise disseminated the Copyrighted Photographs through Defendants’ media publications and associated websites.

3. But this is nothing new to Defendant; it printed plaintiff’s copyrighted photograph of Willie Nelson several times in the past without license or attribution.

4. Defendant has infringed Plaintiff’s exclusive rights under the Copyright Act. Further, Defendant’s intent or reckless disregard, for purposes of statutory damages, is easily proven. For two years Plaintiff demanded the Copyrighted photographs be taken down, and for two years Defendant refused necessitating the present action.

5. Defendant must be held accountable for such predatory behavior, and only an award at the top of the statutory damage range for intentional infringement will serve the purposes of the Act.

JURISDICTION AND VENUE

6. The jurisdiction of this Court is based upon 28 U.S.C. § 1331 in that this controversy arises under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.).

7. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

8. The subject photographs were registered with the United States Copyright Office prior to the infringement by Defendants.

9. Personal jurisdiction over Defendants is proper in this Court on the ground that Defendants maintain a headquarters or otherwise reside in New York, NY.

10. The Court has personal jurisdiction over Defendant pursuant to CPLR § 302 (New York’s long-arm statute) due to its continuous and systematic business activities within New York as described below.

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and (c).
12. Copies of the respective photographs and certificates issued by the U.S. Copyright Office, namely (i) VAu 1-132-411 and VAu 1-182-727, are annexed incorporated hereto respectively as **Exhibit A.**

PARTIES

13. Plaintiff LARRY G. PHILPOT (“PHILPOT”) is a professional photographer who has achieved significant acclaim as a photographer for concert events held throughout the United States. PHILPOT resides in Indianapolis, Indiana.

14. Defendant Voice Media Group Inc. (“VOICE MEDIA”) is an Arizona Corporation registered to do business in New York County. VMG has a headquarters located at 80 Maiden Lane, Suite #2105. New York, NY 10038.

FACTS COMMON TO ALL COUNTS

15. Plaintiff is a well-known photographer and earns a living licensing his photographs to customers such as Forbes, AOL, AXS-TV, Berkshire Hathaway, and musicians such as KISS, John Mellencamp, and Willie Nelson.

16. On August 25, 2013, Plaintiff took a photograph of entertainer Kid Rock at a performance in Indianapolis, IN (the “Kid Rock Photograph”). The Kid Rock Photograph is the subject of the copyright registration issued on November 25, 2013 VAu 1-182-727.

17. On October 4, 2009 Plaintiff took a photograph of entertainer Willie Nelson in performance in St. Louis, MO (the “Nelson Photograph”). The Nelson Photograph is an original work and on September 5, 2012 the United States Copyright Office issued Certificate Number VAu 1-132-411.

18. Defendant VMG is the largest group of metropolitan newsweeklies in the United States, publishing papers in eleven geographic areas: Phoenix, New York, Los Angeles, Denver, Houston, Dallas, St. Louis, Miami, Minneapolis, Broward County, and Orange County. The companies namesake Village Voice was founded in New York City in 1955, and is the winner of three Pulitzer Prizes.

INFRINGEMENT FACTS

19. As a general proposition, a copyright confers on the owner the exclusive right to reproduce the copyrighted work.

20. Absent a license from the copyright owner, which the owner is free to grant or deny, reproduction of the work by another constitutes copyright infringement.

21. On or about April 30, 2013, Defendant VMG reproduced, published, and disseminated the Nelson Photograph in the Dallas Observer. Attached as **Exhibit B**.

22. Defendant published the Nelson Photograph without attribution of any kind.

23. In or about November of 2013, VMG property Detroit Metro Times printed the Kid rock Photograph. See **Exhibit C**

24. Defendants simply copied the photograph, removed the attribution, refused to get a license, and intentionally attempted to infringe without consequence.

25. Other unlicensed uses by Defendant of the Nelson Photograph are attached as **Exhibit D**.

26. This type of predatory business tactic must be stopped.

**FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

27. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

28. As a general proposition, a copyright confers on the owner the exclusive right to reproduce the copyrighted work.

29. Absent a license from the copyright owner, which the owner is free to grant or deny, reproduction of the work by another constitutes copyright infringement.

30. Defendant has, without license from Plaintiff, reproduced and/or publicly distributed the Copyrighted Photographs.

31. It cannot be disputed that Plaintiff has valid, registered copyrights, and that Defendant has reproduced and displayed the Copyrighted Photographs without a license; thus infringing Plaintiff's rights under the Copyright Act. Irreparable injury is presumed here as Plaintiff has established a *prima facie* case of copyright infringement.

32. Even after Defendant was put on notice (many times, over two years) that it had no license or authority, Defendant elected to continue to reproduce and display and/or distribute Plaintiff's Copyrighted Photographs.

33. The making or the distribution, or both, of the photographs associated with the Copyright Registrations without attribution or license is actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

34. Defendant's predatory conduct was clearly intentional within the meaning of 504(c)(2) for purposes of enhancing statutory damages. Defendant knew its actions constituted an infringement or at the very least acted with reckless disregard to Plaintiff's rights.

35. Defendant's knowledge and intent may be inferred from its conduct including the reckless disregard of Plaintiff's right (rather than actual knowledge of infringement), which suffices to warrant award of the enhanced damages.

36. As a direct and proximate result of each of the Defendant's infringements, Plaintiff has incurred actual damages in the form of license fees while Defendant has used Plaintiff's Copyrighted Photographs for its own commercial gain in an amount that will be determined at trial. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement for each of the Copyright Registrations of up to \$150,000, but not less than \$30,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. statutory damages in the amount of \$150,000 per infringement for each Copyright Registration identified in the annexed **Exhibit A**, but in no case less than \$30,000 with respect to each infringement, or for such other amount as may be proper pursuant to 17 U.S.C. § 504(c);
- B. for Plaintiff's actual damage if Plaintiff so elects, and Defendant's profits;
- C. Plaintiff's attorneys' fees, costs, and disbursements incurred in this action pursuant to 17 U.S.C. § 505 and 15 U.S.C. § 1117; and,
- D. for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: May 11, 2016

GARBARINI FITZGERALD P.C.

By: *Rickal M. Garbarini*

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7th Floor
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Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

Registration Number
VAu 1-132-411

Effective date of registration:

September 5, 2012

Title

Title of Work: 2009 Musician Photos

Contents Titles: 2009 Musician Photos

Completion/Publication

Year of Completion: 2009

Nation of 1st Publication: United States

Author

■ **Author:** Larry Gene Philpot

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1953

Copyright claimant

Copyright Claimant: Larry Gene Philpot

12527 Winding Creek Lane, Indianapolis, IN, 46236

Rights and Permissions

Name: Larry Philpot

Email: larrygphilpot@gmail.com

Telephone: 317-567-1338

Address: 12527 Winding Creek Lane

Indianapolis, IN 46236 United States

Certification

Name: Larry G. Philpot

Date: September 5, 2012

351-WHP Document 6 Filed 03/14/10



Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Maria A. Pallante".

Register of Copyrights, United States of America

Registration Number

VAu 1-182-727

Effective date of registration:

December 9, 2013

Title

Title of Work: Unpublished Photographs through 11.23.13

Completion/Publication

Year of Completion: 2013

Author

■ **Author:** Larry Gene Philpot

Author Created: photograph(s)

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Larry Gene Philpot

12527 Winding Creek Lane, Indianapolis, IN, 46236

Rights and Permissions

Name: Larry Gene Philpot

Email: larry@behindthemusic.net

Telephone: 317-567-1338

Address: 12527 Winding Creek Lane

Indianapolis, IN 46236 United States

Certification

Name: Larry G. Philpot

Date: November 25, 2013

L851-WHP Document 6 Filed 03/14/16



Exhibit B

blogs.dallasobserver.com/dc9/2013/04/willie_nelson_80_birthday.php Case 1:16-cv-01851-WHP Document 6 Filed 03/14/16 Page 14 of 18 youtube rocket man shatner

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New A.Dd+: National Release in "4 to 6 Weeks" By Vanessa Quibattan

Ten Must-See Concerts in DFW This Week: June 20-26 By Rachel Watts

Texas History

Willie Nelson Turns 80: A Tribute and Playlist for a Texas Treasure

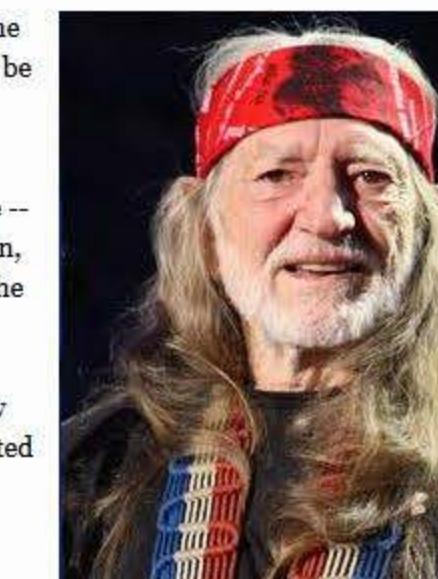
By Jaime-Paul Falcon Tue., Apr. 30 2013 at 4:42 AM Categories: Texas History

Write Comment

Willie Nelson was born 80 years ago today in the small town of Abbott, Texas. This really should be a holiday.

Nelson has been a Texas institution for over 50 years now. He's closely tied to our state's image -- his long career saw him start as a DJ in Houston, move to Nashville as a song writer, end up on the Grand Ole Opry and eventually move back to Texas to take part in the Cosmic Cowboy movement and help launch the world of Outlaw Country. His annual Fourth of July Picnic, started in 1973 after Willie's legendary performance at the '72 Dripping Springs Reunion, is widely known as the best damn time in the state.

Nelson has long been known for his activism -- he holds chairs on numerous philanthropic boards -- while also using much of his spare time advocating for everything from Better Treatment of Horses, to marijuana legalization and



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The 10 Greatest Dallas Blues Artists



Ariel Pink - Trees - June 17, 2013

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Exhibit C



SUNDAY-THURSDAY RECEIVE 20% DISCOUNT

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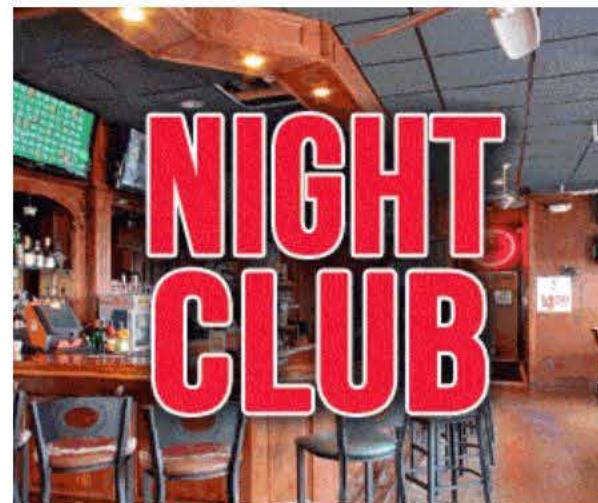
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10 Detroit artists who should be on the Jack White tribute album



Kid Rock “Steady as She Goes”

An American flag drops from the sky, the Kid rises from the ground and says a prayer, the crowd goes wild,



[BROWSE GALLERIES](#)



PHOTOS FROM THE RED BULL HOUSE OF ART CYCLE

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Exhibit D

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Birthday

Happy Birthday, Willie Nelson, and Hello to Other Musicians Who Worship the Weed!

By Lee Zimmerman Mon., Apr. 30 2012 at 6:43 AM

Categories: [Birthday](#)[Write Comment](#)

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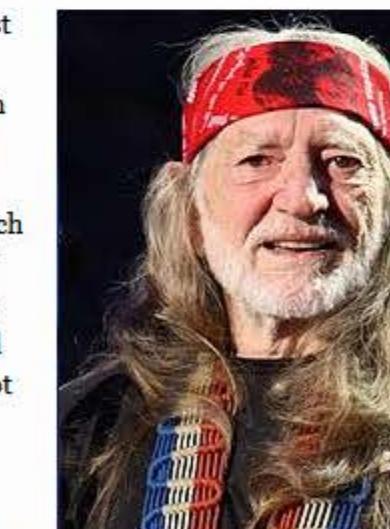


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Suffice it to say, Willie Nelson may well be the most prodigious musician working today, no small accomplishment for a guy turning 79. Born April 30, 1933, Willie continues to issue multiple albums in the space of a single year, generally for multiple labels (his accountant must go crazy!), each with a different focus and often in the company of younger, big-name guest stars. And yet, that's only part of his accomplishments. An author, actor, and activist, he's always on the move, and when he's not touring on his biofueled bus, you may find him relaxing on the golf course.

Still, it's not like he's got anything left to prove. The writer of numerous country standards ("Crazy," "Hello Walls," "Funny How Time Slips Away," and "Pretty Paper" among them), he began to record in



Courtesy of Wikipedia

 Happy Birthday, Willie! Have a toke
on us!

Now Trending



Five Things a Record Can Do That an MP3 Cannot



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REVOLUTION